

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 819 of 1997

in

CIVIL APPLICATION No 5756 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SHANTABEN WD/O. MAGANBHAI N. NAIK

Versus

STATE OF GUJARAT

Appearance:

MR MI HAVA for Petitioners
Ms. Katha Gajjar, AGP for the respondent State.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 20/08/97

ORAL JUDGEMENT

This appeal is filed against an order

passed by the learned Single Judge in Civil Application No. 5756 of 1997 on June 2, 1997. That Application was filed by the appellants Shantaben, widow of Maganlal Naik and Hitesh Maganbhai son of Maganlal Naik, as heirs and legal representatives of deceased Maganbhai Naik.

2. Special Civil Application No. 5997 of 1993 was filed in 1993 by Maganbhai Naik. During pendency of the petition, Maganbhai Naik died and the petition abated. Hence, civil application was made for bringing heirs and legal representatives on record by the present appellants and for setting aside abatement. The learned Single Judge held that it could not be said that widow and the son were not aware of the proceedings pending in this Court and therefore, there was sufficient ground to set aside abatement. He therefore, rejected the application. The petition stood abated. That order is challenged by the present appellants.

2. When the matter was placed before us for admission, we had issued notice for admission as well as for final hearing. We have heard Ms. Katha Gajjar, learned AGP for the respondent State.

3. It was mentioned in civil application that the appellants-applicants were not aware of pendency of Special Civil Application No. 5997 of 1993 pending in this Court. There is no statutory period of limitation as applicable to proceedings under Article 226 and/or 227 of the Constitution. In our opinion, therefore, it would be in the interest of justice to grant prayer. Accordingly, the prayer is granted. The order passed by the learned Single Judge on 27.6.97 in Civil Application No. 5756 of 1997 is set aside. The matter is ordered to be restored to file. The appellants are ordered to be brought on record as petitioners in Special Civil Application no. 5997 of 1997. The matter will now go back to the learned Single Judge who will decide the same in accordance with law. We may observe that we have not expressed any opinion on merits of the matter and as and when the matter will be placed before the learned Single Judge for final hearing, he will decide the same on its own merits. This appeal is accordingly allowed, however, with no order as to costs.

(C.K.Thakkar, J)

(S.D.Pandit, J)

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